HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1687 of 2001

Parsuram Mishra

Versus.

The conciliation Officer and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 27.4.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1687 of 2001 (M/S)
(Old No. 26436 of 1999)

Parsuram Mishra …….. Petitioner

Verssu

The Conciliation Officer
and another …….… Respondents

Mr. S.S. Yadav, learned counsel for the petitioner.
Mr. Gopal Narain, learned counsel for respondent No. 2.

Hon. Rajesh Tandon, J.

By the present writ petition the petitioner prayed for issuance of a writ of certiorari commanding the respondent No. 1 for quashing the order dated 5th April 1999 and further a writ of mandamus commanding the respondent No. 1 to entertain the dispute and try to bring a negotiated settlement.

Brief facts of the case are that the petitioner was employed in M/s Century Pulp and Paper Mills, Ghanshyam Dham, Lal Kuon, Nainital. He joined his duties on 8th July 1986. The petitioner has submitted that in August 1987 he became ill and he suffered from mental disorder and had therefore to undergo treatment. According to the petitioner, he was confined to the mental hospital Ranchi (Bihar) and when he became well and capable of resuming duty he approached the respondent Company for being given employment. The petitioner has submitted that the respondent Company did not permit him to resume duty. The petitioner thereafter approached the authorities under the U.P. Industrial Dispute Act, 1947 by initiating the conciliation proceedings and on 5th April 1999 the conciliation proceedings

were refused on the ground that he had not approached the Labour Court within a period of six months from the date his services has been terminated. It is against this order of the respondent No. 1 that the petitioner has approached this Court.

Mr. S.S. Yadav, learned counsel for the petitioner has stated that since the Labour Court has rejected the conciliation proceedings on account of the fact that the petitioner has not approached them within a period of six months, therefore, the entire order is liable to be quashed. He has also stated that the period of six months has given by the Labour Court is wholly illegal and in view of the latest judgment of the Apex Court no such limitation is binding on the Conciliation Officer under section 4k of the U.P. Industrial Dispute Act, 1947 and the Authority concerned has a right to refer the dispute for adjudication to the Labour Court or a Tribunal. Apart from the aforesaid, the petitioner has also stated that he has given sufficient proof regarding his confinement in the mental hospital.

On the other hand, Mr. Gopal Narain, learned counsel for the respondent No. 2 has vehemently opposed and has submitted that Conciliation Officer has rightly referred the dispute and has rightly rejected the proceedings on account of the delay.

Counsel for the petitioner has referred the judgment of the Apex Court in case of Sapan Kumar Pandit Vs U.P. State Electricity Board & others reported in 2001 SC-SLR 658 where the Apex Court in paragraph No. 14 after relying upon the judgment of M/s Western India Watch Company ltd. Vs The Western India Watch Company Workers Union has observed as under:

"It is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e. Section 4-K of the U.P. Act. In M/s Western India Watch Co. ltd. Vs The Western India Watch Co. Workers Union, AIR 1970 SC 1205, learned Judges made the following observations:

> *"Therefore, the expression 'at any time', though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can 'at any time', i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression 'at any time' thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression 'at any time' in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."*

15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody hand kept the dispute

alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination.

The Conciliation Officer, respondent No. 1 has discussed the evidence that the petitioner has not given the medical certificate. In my view, in the light of the judgment of the Apex Court it was not at all necessary for the petitioner to file the medical certificate when he has stated in the application that he was admitted in mental hospital, Ranchi and mentally he was not fit to move the application also the medical certificate was not necessary at that time of examination for referring the matter to the Labour Court.

In view of the aforesaid fact there is no ground to enter on the technicalities of the medical certificate and the delay can be easily compensated when the question comes with regard to the employee concerned on account of the facts that his services were illegally terminated. The delay is the factor which can be taken into account at the time of adjudication and in view of the

aforesaid facts and circumstances the writ petition is allowed. The order passed by the conciliation Officer is hereby quashed. The Conciliation Officer after hearing both the parties shall pass an appropriate order in accordance with law within a period of six weeks from the date of filing of the certified copy of this Order.

(Rajesh Tandon J.)

Dt. 27.04.2004
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